

House Amendment 8553

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1 1 Amend House File 2686 as follows:
1 2 ~~#1.~~ By striking everything after the enacting
1 3 clause and inserting the following:
1 4 <DIVISION I
1 5 WAGE PAYMENT COLLECTION
1 6 Section 1. Section 91A.2, subsection 3, Code 2007,
1 7 is amended to read as follows:
1 8 3. "Employee" means a natural person who is
1 9 employed in this state for wages by an employer.
1 10 Employee also includes a commission salesperson who
1 11 takes orders or performs services on behalf of a
1 12 principal and who is paid on the basis of commissions
1 13 but does not include persons who purchase for their
1 14 own account for resale.
1 15 a. For the purposes of this chapter, the following
1 16 persons engaged in agriculture are not employees:
1 17 ~~a-~~ (1) The spouse of the employer and relatives
1 18 of either the employer or spouse residing on the
1 19 premises of the employer.
1 20 ~~b-~~ (2) A person engaged in agriculture as an
1 21 owner-operator or tenant-operator and the spouse or
1 22 relatives of either who reside on the premises while
1 23 exchanging labor with the operator or for other mutual
1 24 benefit of any and all such persons.
1 25 ~~c-~~ (3) Neighboring persons engaged in agriculture
1 26 who are exchanging labor or other services.
1 27 (4) For the purposes of this chapter, persons
1 28 licensed under chapter 543B are not employees.
1 29 ~~b.~~ In order to establish the absence of an
1 30 employment relationship, a putative employer has the
1 31 burden to establish all of the following:
1 32 (1) The putative employer and putative employee
1 33 share the intention to create an independent
1 34 contractor relationship.
1 35 (2) The putative employer does not control or
1 36 direct the performance of services by the putative
1 37 employee.
1 38 (3) The putative employer is not responsible for
1 39 payment of wages to the putative employee.
1 40 (4) The putative employer does not have the right
1 41 to discharge the putative employee or terminate the
1 42 working relationship with the putative employee.
1 43 (5) The putative employer is not the authority in
1 44 charge of the work or for whose benefit the putative
1 45 employee is providing services.
1 46 Sec. 2. Section 91A.2, subsection 6, Code 2007, is
1 47 amended to read as follows:
1 48 6. "Liquidated damages" means the sum of five
1 49 percent multiplied by the amount of any wages that
1 50 were not paid or of any authorized expenses that were
2 1 not reimbursed on a regular payday or on another day
2 2 pursuant to section 91A.3 multiplied by the total
2 3 number of days, excluding Sundays, legal holidays, and
2 4 the first seven days after the regular payday on which
2 5 wages were not paid or expenses were not reimbursed.
2 6 However, such sum shall not exceed twice the amount of
2 7 the unpaid wages and shall not accumulate ~~when an~~
2 8 ~~employer is subject to a petition filed in bankruptcy.~~
2 9 Sec. 3. Section 91A.6, subsections 1 and 2, Code
2 10 2007, are amended to read as follows:
2 11 1. An employer shall ~~after being notified by the~~
2 12 ~~commissioner pursuant to subsection 2~~ do the
2 13 following:
2 14 a. Notify its employees in writing at the time of
2 15 hiring what wages and regular paydays are designated
2 16 by the employer.
2 17 b. Notify, at least one pay period prior to the
2 18 initiation of any changes, its employees of any
2 19 changes in the arrangements specified in this
2 20 subsection ± that reduce wages or alter the regular
2 21 paydays. The notice shall either be in writing or
2 22 posted at a place where employee notices are routinely
2 23 posted.
2 24 c. Make available to its employees upon written

2 25 request, a written statement enumerating employment
2 26 agreements and policies with regard to vacation pay,
2 27 sick leave, reimbursement for expenses, retirement
2 28 benefits, severance pay, or other comparable matters
2 29 with respect to wages. Notice of such availability
2 30 shall be given to each employee in writing or by a
2 31 notice posted at a place where employee notices are
2 32 routinely posted.

2 33 d. Establish, maintain, and preserve for three
2 34 calendar years the payroll records showing the hours
2 35 worked, wages earned, and deductions made for each
2 36 employee and any employment agreements entered into
2 37 between an employer and employee. Failure to do so
2 38 shall raise a rebuttable presumption that the employer
2 39 did not pay the required minimum wage under section
2 40 91D.1.

2 41 ~~2. The commissioner shall notify an employer to~~
2 42 ~~comply with subsection 1 if the employer has paid a~~
2 43 ~~claim for unpaid wages or nonreimbursed authorized~~
2 44 ~~expenses and liquidated damages under section 91A.10~~
2 45 ~~or if the employer has been assessed a civil money~~
2 46 ~~penalty under section 91A.12. However, a court may,~~
2 47 ~~when rendering a judgment for wages or nonreimbursed~~
2 48 ~~authorized expenses and liquidated damages or~~
2 49 ~~upholding a civil money penalty assessment, order that~~
2 50 ~~an employer shall not be required to comply with the~~
3 1 ~~provisions of subsection 1 or that an employer shall~~
3 2 ~~be required to comply with the provisions of~~
3 3 ~~subsection 1 for a particular period of time.~~

3 4 Sec. 4. Section 91A.8, Code 2007, is amended to
3 5 read as follows:

3 6 91A.8 VIOLATIONS BY EMPLOYER, DAMAGES RECOVERABLE
3 7 BY AN EMPLOYEE UNDER THIS CHAPTER.

3 8 1. A violation of this chapter shall occur any
3 9 week when an individual employee was not paid the
3 10 legally required wages under this chapter, state taxes
3 11 were not withheld, or in the case of improper
3 12 discharge, discrimination, or retaliation against an
3 13 employee, every week after the improper discharge,
3 14 discrimination, or retaliation has occurred until
3 15 compensation is finally made.

3 16 2. When it has been shown that an employer has
3 17 ~~intentionally~~ failed to pay an employee wages or
3 18 reimburse expenses pursuant to section 91A.3, whether
3 19 as the result of a wage dispute or otherwise, the
3 20 employer shall be liable to the employee for ~~any the~~
3 21 ~~unpaid wages or expenses that are so intentionally~~
3 22 ~~failed to be paid or reimbursed, plus liquidated~~
3 23 ~~damages, court costs, and any attorney's attorney fees~~
3 24 ~~incurred in recovering the unpaid wages and determined~~
3 25 ~~to have been usual and necessary. In other instances~~
3 26 ~~the employer shall be liable only for unpaid wages or~~
3 27 ~~expenses, court costs and usual and necessary~~
3 28 ~~attorney's fees incurred in recovering the unpaid~~
3 29 ~~wages or expenses.~~

3 30 Sec. 5. Section 91A.9, subsection 2, Code 2007, is
3 31 amended to read as follows:

3 32 2. a. The commissioner may, consistent with due
3 33 process of law, enter any place of employment to
3 34 inspect records concerning wages and payrolls, to
3 35 question the employer and employees, and to
3 36 investigate such facts, conditions, or matters as are
3 37 deemed appropriate in determining whether any person
3 38 has violated the provisions of this chapter. ~~However,~~
3 39 ~~such entry by the commissioner shall only be in~~
3 40 ~~response to a written complaint.~~

3 41 b. A complaining employee may submit a written
3 42 request for confidentiality of identifying
3 43 information. Upon such request, the commissioner
3 44 shall determine if the commissioner can effectively
3 45 pursue the matter while keeping the identity of the
3 46 complaining employee confidential. If the
3 47 commissioner determines that an employee's identity
3 48 must be disclosed in order to effectively pursue the
3 49 matter, the commissioner may do so only with the
3 50 employee's consent. Otherwise, the commissioner shall
4 1 keep the complaining employee's identity confidential
4 2 notwithstanding chapter 22.

4 3 Sec. 6. Section 91A.10, subsection 1, Code 2007,
4 4 is amended to read as follows:

4 5 1. a. Upon the written complaint of the employee

4 6 involved, the commissioner may determine whether wages
4 7 have not been paid and may constitute an enforceable
4 8 claim. If for any reason the commissioner decides not
4 9 to make such determination, the commissioner shall so
4 10 notify the complaining employee within fourteen days
4 11 of receipt of the complaint. The commissioner shall
4 12 otherwise notify the employee of such determination
4 13 within a reasonable time ~~and if it is determined.~~

4 14 b. Without regard to whether the commissioner
4 15 received a written complaint from an employee or
4 16 initiated an investigation, if the commissioner
4 17 determines that there is an enforceable claim, the
4 18 commissioner shall, with the consent of the
4 19 complaining employee, take an assignment in trust for
4 20 the wages and for any claim for liquidated damages
4 21 without being bound by any of the. The technical
4 22 rules respecting the validity of the assignment shall
4 23 not apply. However, the commissioner shall not accept
4 24 any complaint for unpaid wages and liquidated damages
4 25 after one year from the date the wages became due and
4 26 payable.

4 27 Sec. 7. Section 91A.10, subsection 5, Code 2007,
4 28 is amended to read as follows:

4 29 5. ~~An employer shall not discharge or in any other~~
4 30 ~~manner discriminate against any employee because the~~
4 31 ~~employee has filed a complaint, assigned a claim, or~~
4 32 ~~brought an action under this section or has cooperated~~
4 33 ~~in bringing any action against an employer. An~~
4 34 ~~employer or other person shall not discharge or in any~~
4 35 ~~other manner discriminate or retaliate against an~~
4 36 ~~employee or other person for exercising any right~~
4 37 ~~provided under this chapter or any rules adopted~~
4 38 ~~pursuant to this chapter, or against another employee~~
4 39 ~~or person for providing assistance to an employee or~~
4 40 ~~providing information regarding the employee or~~
4 41 ~~person, or for testifying or planning to testify in~~
4 42 ~~any investigation or proceeding regarding the employee~~
4 43 ~~or person. Taking adverse action against an employee~~
4 44 ~~or other person within ninety days of an employee's or~~
4 45 ~~other person's engaging in the foregoing activities~~
4 46 ~~raises a presumption that such action was retaliation,~~
4 47 ~~which may be rebutted by clear and convincing evidence~~
4 48 ~~that such action was taken for other permissible~~

4 49 ~~reasons.~~ Any employee may file a complaint with the
4 50 commissioner alleging discharge, ~~or discrimination, or~~
5 1 ~~retaliation~~ within thirty days after such violation
5 2 occurs. Upon receipt of the complaint, the
5 3 commissioner shall cause an investigation to be made
5 4 to the extent deemed appropriate. If the commissioner
5 5 determines from the investigation that the provisions
5 6 of this subsection have been violated, the
5 7 commissioner shall bring an action in the appropriate
5 8 district court against such person. The district
5 9 court shall have jurisdiction, for cause shown, to
5 10 restrain violations of this subsection and order all
5 11 appropriate relief including rehiring or reinstatement
5 12 of the employee to the former position with back pay.

5 13 Sec. 8. Section 91A.10, Code 2007, is amended by
5 14 adding the following new subsection:

5 15 NEW SUBSECTION. 6. A civil action to enforce this
5 16 section may also be maintained in any court of
5 17 competent jurisdiction by the commissioner or by any
5 18 party injured by a violation of this section. An
5 19 employer or other person who retaliates against an
5 20 employee or other person in violation of this section
5 21 shall be required to pay the person an amount set by
5 22 the commissioner or a court sufficient to compensate
5 23 the employee or other person and deter future
5 24 violations, but not less than one hundred fifty
5 25 dollars for each day that the violation continued.

5 26 Sec. 9. Section 91A.12, subsection 1, Code 2007,
5 27 is amended to read as follows:

5 28 1. Any employer who violates the provisions of
5 29 this chapter or the rules ~~promulgated under it~~ adopted
5 30 pursuant to this chapter shall be subject to a civil
5 31 money penalty of not more than ~~one~~ five hundred
5 32 dollars for each violation. The commissioner may
5 33 recover such civil money penalty according to the
5 34 provisions of subsections 2 ~~to~~ through 5. Any civil
5 35 money penalty recovered shall be deposited in the
5 36 general fund of the state.

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DIVISION II
EMPLOYEE CLASSIFICATION

Sec. 10. NEW SECTION. 91G.1 PURPOSE.
The purpose of this chapter is to address the practice of misclassifying employees as independent contractors.

Sec. 11. NEW SECTION. 91G.2 DEFINITIONS.
1. "Commissioner" means the labor commissioner appointed pursuant to section 91.2 or the labor commissioner's designee.
2. "Construction" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water works, parking facility, railroad, excavation or other project, development, real property, or improvement, or to do any part thereof, whether or not the performance of the work described in this subsection involves an addition to, or fabrication into, any structure, project, development, real property, or improvement described in this subsection of any material or article of merchandise.

3. "Contractor" means any person, as defined in section 4.1, engaged in construction. "Contractor" includes general contractors, subcontractors, and the state of Iowa and its officers, agencies, and political subdivisions.

4. "Division" means the division of labor services of the department of workforce development.

5. "Interested party" means an individual performing services for a contractor who alleges a violation of this chapter or a person with an interest in compliance with this chapter.

6. "Performing services" means any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water works, parking facility, railroad, excavation or other project, development, real property, or improvement, or to do any part thereof, whether or not the performance of the work described in this subsection involves an addition to, or fabrication into, any structure, project, development, real property, or improvement described in this subsection of any material or article of merchandise.

Sec. 12. NEW SECTION. 91G.3 STATUS OF INDIVIDUALS PERFORMING SERVICES.

1. An individual performing services shall be classified as an employee unless all of the following conditions are present and the contractor and the individual both intend to create an independent contractor relationship between the contractor and the individual:

a. The contractor does not control or direct the performance of services by the individual.

b. The contractor is not responsible for the payment of the individual's wages.

c. The contractor does not have the right to discharge the individual or terminate the employment relationship with the individual.

d. The contractor is not the authority in charge of the work or for whose benefit the individual is providing services.

2. An individual classified as an employee under this section shall also be classified as an employee pursuant to chapters 85, 85A, 85B, 88, 91A, and 96. A contractor commits a violation of this chapter by not treating the individual so classified under this chapter as an employee pursuant to chapters 85, 85A, 85B, 88, 91A, and 96.

3. An individual who is an owner-operator as

7 18 described in section 85.61, subsection 11, and not
7 19 deemed an employee under that subsection shall not be
7 20 classified as an employee under this section.

7 21 Sec. 13. NEW SECTION. 91G.4 NOTICE OF LAW.

7 22 1. The commissioner shall create posters in both
7 23 English and Spanish summarizing the requirements of
7 24 this chapter. The English and Spanish versions of the
7 25 poster shall be posted on the division's internet site
7 26 and on bulletin boards in the workforce centers.

7 27 2. The commissioner shall provide the posters
7 28 without charge to contractors upon request.

7 29 3. If a contractor violates section 91G.3 or 91G.8
7 30 or rules adopted pursuant to any of those sections,
7 31 the contractor shall post the English and Spanish
7 32 versions of the poster created by the commissioner.
7 33 The posters shall be posted in conspicuous locations
7 34 at the places where notices to employees are normally
7 35 posted at each job site and office of the contractor.

7 36 Sec. 14. NEW SECTION. 91G.5 ENFORCEMENT.

7 37 1. An interested party may file a complaint with
7 38 the commissioner alleging a violation of section
7 39 91G.3, 91G.4, or 91G.8 or rules adopted pursuant to
7 40 any of those sections. An interested party who makes
7 41 a complaint when the interested party knows such
7 42 representation to be false commits a simple
7 43 misdemeanor.

7 44 2. The commissioner shall adopt rules pursuant to
7 45 and consistent with chapter 17A regarding
7 46 investigations to determine whether a contractor has
7 47 violated any provisions of this chapter or any rules
7 48 adopted pursuant to this chapter.

7 49 3. A person acting in an official capacity related
7 50 to services provided by the commissioner for the
8 1 purposes of workplace safety training and education,
8 2 pursuant to section 88.16, shall not file or
8 3 investigate a complaint pursuant to this chapter if
8 4 the information leading to the complaint was received
8 5 due to services provided pursuant to section 88.16.

8 6 4. The commissioner shall enforce the provisions
8 7 of this chapter. The commissioner may conduct
8 8 investigations in connection with the administration
8 9 and enforcement of this chapter and may visit and
8 10 inspect, at all reasonable times, any places where
8 11 individuals are performing services for a contractor
8 12 and may inspect, at all reasonable times, documents
8 13 related to the determination of whether an individual
8 14 is an employee under section 91G.3.

8 15 5. The commissioner and an employee of the
8 16 commissioner shall be indemnified for any damages and
8 17 legal expenses incurred as a result of the good-faith
8 18 performance of the employee's official duties under
8 19 this chapter, in regard to any claim for civil damages
8 20 not specifically covered by the Iowa tort claims Act,
8 21 chapter 669.

8 22 6. The commissioner may compel by subpoena the
8 23 attendance and testimony of witnesses and the
8 24 production of books, payrolls, records, papers, and
8 25 other evidence in an investigation and may administer
8 26 oaths to witnesses.

8 27 7. Upon the failure or refusal of any person to
8 28 obey a subpoena, the commissioner may petition a
8 29 district court of competent jurisdiction, and upon
8 30 proper showing, the court may enter an order
8 31 compelling the witness to appear and testify or
8 32 produce documentary evidence. Failure to obey the
8 33 court order is punishable as contempt of court.

8 34 8. A determination by the commissioner as to
8 35 whether a violation of section 91G.3, 91G.4, or 91G.8
8 36 or rules adopted pursuant to any of those sections has
8 37 occurred shall be considered final agency action under
8 38 chapter 17A.

8 39 9. If the commissioner determines upon
8 40 investigation that a violation of section 91G.3,
8 41 91G.4, or 91G.8 or rules adopted pursuant to any of
8 42 those sections has occurred, the commissioner may do
8 43 any of the following:

8 44 a. Issue and cause to be served on any party an
8 45 order to cease and desist from any further violation.

8 46 b. Take affirmative or other action as deemed
8 47 reasonable to eliminate the effect of any violation.

8 48 c. Collect the amount of any wages, salary,

8 49 employment benefits, or other compensation denied or
8 50 lost to an individual.

9 1 d. Assess any civil penalty allowed by this
9 2 chapter.

9 3 e. Refer matters to the county attorney upon
9 4 determining that a criminal violation may have
9 5 occurred.

9 6 10. Judicial review of any final agency action of
9 7 the commissioner taken pursuant to this section may be
9 8 sought in accordance with the terms of chapter 17A.
9 9 If a petition for judicial review is not filed within
9 10 thirty days after service of the determination of the
9 11 commissioner, the commissioner's determination shall
9 12 be conclusive in connection with any petition for
9 13 enforcement filed by the commissioner and in such
9 14 case, the clerk of court, unless otherwise ordered by
9 15 the court, shall forthwith enter a decree enforcing
9 16 the commissioner's determination and shall transmit a
9 17 copy of the decree to the commissioner and the
9 18 contractor named in the petition.

9 19 11. A contractor shall not be liable under this
9 20 chapter for any other contractor's failure to properly
9 21 classify individuals.

9 22 12. In any civil action to enforce the provisions
9 23 of this chapter, the commissioner may be represented
9 24 by an attorney employed by the division or, at the
9 25 commissioner's request, by the attorney general.

9 26 Sec. 15. NEW SECTION. 91G.6 PENALTIES.

9 27 1. A contractor who violates section 91G.3, 91G.4,
9 28 or 91G.8 or rules adopted pursuant to one of those
9 29 sections is subject to a civil penalty not to exceed
9 30 one thousand two hundred fifty dollars for a first
9 31 violation as determined by the commissioner. A
9 32 contractor is subject to a civil penalty not to exceed
9 33 one thousand eight hundred seventy-five dollars for a
9 34 second violation occurring within six years of a first
9 35 violation as determined by the commissioner. A
9 36 contractor shall be subject to a civil penalty not to
9 37 exceed three thousand one hundred twenty-five dollars
9 38 for a third or successive violation occurring within
9 39 six years of a first violation as determined by the
9 40 commissioner.

9 41 2. A contractor who violates any provision of
9 42 section 91G.3, 91G.4, or 91G.8 or rules adopted
9 43 pursuant to one of those sections commits a simple
9 44 misdemeanor. A contractor who commits such a second
9 45 violation within six years of a first violation
9 46 commits a serious misdemeanor. A contractor who
9 47 commits such a third or subsequent violation within
9 48 six years of a first violation commits an aggravated
9 49 misdemeanor.

9 50 3. A contractor who obstructs the commissioner,
10 1 the employee of the commissioner, or another person
10 2 authorized to inspect places where individuals are
10 3 performing services for a contractor is subject to a
10 4 civil penalty not to exceed one thousand eight hundred
10 5 seventy-five dollars.

10 6 4. Each violation described in this section for
10 7 each individual and for each day the violation
10 8 continues constitutes a separate and distinct
10 9 violation. In determining the amount of a civil
10 10 penalty, the commissioner shall consider the
10 11 appropriateness of the civil penalty to the contractor
10 12 and the gravity of the violation.

10 13 Sec. 16. NEW SECTION. 91G.7 STATE CONTRACT
10 14 PROHIBITION.

10 15 For a second or subsequent violation of section
10 16 91G.3 or 91G.4 determined by the commissioner to have
10 17 occurred within six years of an earlier violation or
10 18 for a first or subsequent violation of section 91G.8,
10 19 the commissioner shall add the contractor's name to a
10 20 list to be posted on the division's internet site and
10 21 notify the violating contractor of the posting. A
10 22 state contract shall not be awarded to a contractor
10 23 whose name appears on the list until three years have
10 24 elapsed from the date of the determination of the last
10 25 violation.

10 26 Sec. 17. NEW SECTION. 91G.8 RETALIATION.

10 27 1. A contractor or contractor's agent shall not
10 28 retaliate through discharge or in any other manner
10 29 against an individual for any of the following:

10 30 a. Making a good-faith complaint to the
10 31 commissioner or to a state or federal agency regarding
10 32 a violation of section 91G.3 or 91G.4.
10 33 b. Testifying or otherwise cooperating in an
10 34 investigation or proceeding under this chapter.
10 35 2. Such retaliation shall subject a contractor or
10 36 contractor's agent to civil penalties and a
10 37 prohibition on being awarded state contracts pursuant
10 38 to this chapter and may give rise to a private right
10 39 of action.
10 40 Sec. 18. NEW SECTION. 91G.9 DISPOSITION OF
10 41 PENALTIES.
10 42 Any penalties assessed and collected by the
10 43 commissioner pursuant to this chapter shall be
10 44 deposited in the general fund of the state.
10 45 Sec. 19. NEW SECTION. 91G.10 PRIVATE RIGHT OF
10 46 ACTION.
10 47 1. An individual, who has not received
10 48 compensatory damages under section 91G.5, alleging a
10 49 contractor's violation of this chapter or a rule
10 50 adopted pursuant to this chapter and damages may file
11 1 suit in district court against the contractor, in the
11 2 county where the alleged violation occurred, or where
11 3 any person who is party to the action resides, without
11 4 regard to exhaustion of any alternative administrative
11 5 remedies provided in this chapter. Actions may be
11 6 brought by one or more aggrieved individuals for and
11 7 on behalf of themselves and other individuals
11 8 similarly situated.
11 9 2. If it is established that an individual has
11 10 been damaged through a proceeding under subsection 1
11 11 by a contractor who has willfully violated a provision
11 12 of this chapter or a rule adopted pursuant to this
11 13 chapter, the individual shall be entitled to collect
11 14 the following:
11 15 a. The amount of any wages, salary, employment
11 16 benefits, or other compensation denied or lost to the
11 17 individual due to the violation or a retaliatory
11 18 action, and court costs and interest at the statutory
11 19 rate from the date of filing.
11 20 b. Punitive damages, not to exceed five times the
11 21 amount awarded in paragraph "a".
11 22 c. Reasonable attorney fees, if the contractor who
11 23 has damaged the individual has committed a second or
11 24 subsequent violation of section 91G.3, 91G.4, or
11 25 91G.8, or rules adopted pursuant to this chapter,
11 26 occurring within six years of a first violation.
11 27 3. The right of a damaged individual to bring an
11 28 action under this section terminates five years from
11 29 the date of the alleged violation by the contractor.
11 30 Sec. 20. NEW SECTION. 91G.11 COOPERATION.
11 31 1. All state agencies shall cooperate under this
11 32 chapter by sharing information concerning possible
11 33 misclassification by a contractor of one or more of
11 34 the contractor's employees as independent contractors.
11 35 2. Upon determining that a contractor
11 36 misclassified one or more employees as independent
11 37 contractors in violation of this chapter, the
11 38 commissioner shall notify the division administering
11 39 unemployment insurance services, the division of
11 40 workers' compensation, and the department of revenue,
11 41 each of which shall investigate the contractor's
11 42 compliance with applicable laws.
11 43 3. Cooperation under this chapter shall be
11 44 considered a duty of office for the heads of state
11 45 agencies or their designees. Failure to so cooperate
11 46 constitutes a violation of section 721.2, subsection
11 47 6.
11 48 Sec. 21. NEW SECTION. 91G.12 AGRICULTURAL
11 49 ACTIVITIES.
11 50 A person shall not be classified as an employee or
12 1 a contractor under this chapter when the person
12 2 participates in agricultural activities on
12 3 agricultural land. Agricultural activities include
12 4 the raising, harvesting, handling, drying, processing,
12 5 or storage of crops used for feed, food, fuel, seed,
12 6 or fiber; the production, care, feeding, or keeping of
12 7 livestock; fencing; drainage; the handling or
12 8 transportation of crops or livestock; the storage,
12 9 treatment, land application, or disposal of livestock
12 10 manure; the application of fertilizers, soil

12 11 conditioners, pesticides, and herbicides on crops;
12 12 environmental protection or preservation activities;
12 13 and any accessory or related activities.

12 14 Sec. 22. Section 84A.5, subsection 4, Code
12 15 Supplement 2007, is amended to read as follows:

12 16 4. The division of labor services is responsible
12 17 for the administration of the laws of this state under
12 18 chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A,
12 19 91C, 91D, 91E, 91G, 92, and 94A, and section 85.68.
12 20 The executive head of the division is the labor
12 21 commissioner, appointed pursuant to section 91.2.

12 22 Sec. 23. Section 85.61, subsection 11, paragraph
12 23 b, Code Supplement 2007, is amended to read as
12 24 follows:

12 25 b. (1) "Worker" or "employee" includes an inmate
12 26 as defined in section 85.59 and a person described in
12 27 section 85.60.

12 28 (2) "Worker" or "employee" includes an individual
12 29 who is classified as an employee pursuant to section
12 30 91G.3.

12 31 Sec. 24. Section 86.45, subsection 2, Code 2007,
12 32 is amended by adding the following new paragraph:

12 33 NEW PARAGRAPH. j. To cooperate with the division
12 34 of labor services, the division of the department of
12 35 workforce development that administers unemployment
12 36 insurance services, and the department of revenue
12 37 pursuant to chapter 91G by sharing information
12 38 concerning possible misclassification of one or more
12 39 employees as independent contractors.

12 40 Sec. 25. Section 88.3, subsection 4, Code 2007, is
12 41 amended to read as follows:

12 42 4. "Employee" means an employee of an employer who
12 43 is employed in a business of the employer. "Employee"
12 44 also means an inmate as defined in section 85.59, when
12 45 the inmate works in connection with the maintenance of
12 46 the institution, in an industry maintained in the
12 47 institution, or while otherwise on detail to perform
12 48 services for pay. "Employee" also means a volunteer
12 49 involved in responses to hazardous waste incidences.
12 50 The employer of a volunteer is that entity which
13 1 provides or which is required to provide workers'
13 2 compensation coverage for the volunteer. "Employee"

13 3 includes an individual who is classified as an
13 4 employee pursuant to section 91G.3.

13 5 Sec. 26. Section 91.4, subsection 5, Code
13 6 Supplement 2007, is amended to read as follows:

13 7 5. The director of the department of workforce
13 8 development, in consultation with the labor
13 9 commissioner, shall, at the time provided by law, make
13 10 an annual report to the governor setting forth in
13 11 appropriate form the business and expense of the
13 12 division of labor services for the preceding year, the
13 13 number of disputes or violations processed by the
13 14 division and the disposition of the disputes or
13 15 violations, and other matters pertaining to the
13 16 division which are of public interest, together with
13 17 recommendations for change or amendment of the laws in
13 18 this chapter and chapters 88, 88A, 88B, 89, 89A, 89B,
13 19 90A, 91A, 91C, 91D, 91E, 91G, 92, and 94A, and section
13 20 85.68, and the recommendations, if any, shall be
13 21 transmitted by the governor to the first general
13 22 assembly in session after the report is filed.

13 23 Sec. 27. Section 91A.2, subsection 3, unnumbered
13 24 paragraph 1, Code 2007, is amended to read as follows:

13 25 "Employee" means a natural person who is employed
13 26 in this state for wages by an employer. Employee also
13 27 includes a commission salesperson who takes orders or
13 28 performs services on behalf of a principal and who is
13 29 paid on the basis of commissions but does not include
13 30 persons who purchase for their own account for resale.
13 31 "Employee" includes an individual who is classified as

13 32 an employee pursuant to section 91G.3. For the

13 33 purposes of this chapter, the following persons
13 34 engaged in agriculture are not employees:

13 35 Sec. 28. Section 96.11, Code Supplement 2007, is
13 36 amended by adding the following new subsection:

13 37 NEW SUBSECTION. 17. INTERAGENCY COOPERATION.

13 38 a. All state agencies shall cooperate with the
13 39 director and the department pursuant to chapter 91G by
13 40 sharing information concerning possible
13 41 misclassification of employees as independent

13 42 contractors.
13 43 b. Cooperation under this chapter shall be
13 44 considered a duty of office for the heads of the state
13 45 agencies or their designees. Failure to so cooperate
13 46 constitutes a violation of section 721.2, subsection
13 47 6.

13 48 Sec. 29. Section 96.19, subsection 18, paragraph
13 49 a, subparagraph (2), Code 2007, is amended to read as
13 50 follows:

14 1 (2) Any individual who, under the usual common law
14 2 rules applicable in determining the employer=employee
14 3 relationship, has the status of an employee, or any
14 4 individual who is classified as an employee pursuant
14 5 to section 91G.3, or

14 6 DIVISION III
14 7 SEVERABILITY AND EFFECTIVE DATE
14 8 Sec. 30. SEVERABILITY. The provisions of this Act
14 9 are severable in the manner provided by section 4.12.

14 10 Sec. 31. EFFECTIVE DATE. This Act takes effect
14 11 January 1, 2009.>

14 12 #2. Title page, by striking lines 1 through 7 and
14 13 inserting the following: <An Act relating to wage
14 14 payment collection and employment classification
14 15 issues arising between employers and individuals who
14 16 provide services to employers and including an
14 17 effective date.>

14 18
14 19
14 20
14 21 _____
14 22 JOCHUM of Dubuque

14 23
14 24
14 25 _____
14 26 MASCHER of Johnson

14 27
14 28
14 29 _____
14 30 WESSEL-KROESCHELL of Story

14 31
14 32
14 33 _____
14 34 LENSING of Johnson

14 35
14 36
14 37 _____
14 38 SMITH of Marshall

14 39
14 40
14 41 _____
14 42 WINCKLER of Scott
14 43 HF 2686.206 82
ak/rj/11548